REMARKS

In the amendments above, Claims 2, 10, 84, and 89 have been amended, Claims 69 and 99 have been cancelled, and new Claim 111 has been added, to more particularly point out and distinctly claim Applicants' invention. Support for the newly added claim can be found, for example, in Claims 2, 68, and 69 and Paragraphs 138 and 142 of the Specification.

Applicants note that the Supplemental Amendment was not entered. Applicants submit that notwithstanding the Examiner's comments the Supplemental Amendment could have been entered and would have, in a small way, advanced prosecution, based on the prior Office Action.

Applicants note that "upon further consideration" new rejections have been made. It is respectfully submitted that this further consideration is inappropriate because of (1) the time already spent responding to previous rejections and (2) the fact that Applicants have compromised by inserting the subject matter of dependent claims indicated as containing allowable subject matter into the independent claims. On this basis alone the new prior art rejections should be withdrawn.

Claims 10 and 89 have been objected to. While Applicants do not necessarily agree with the Examiner in this regard, Claims 10 and 89 have been amended above.

Claims 2, 3, 5, 7, 9-12, 61, 63-69, 72-76, and 79-110 have been rejected under 35 U.S.C. §112, second paragraph. Applicants respectfully traverse this rejection.

The term "resilient" is a well known term that refers to, in at least one sense, the ability to recover size and/or shape after deformation. Applicants submit that this term is definite within the meaning of §112, second paragraph.

The phrase "at least partially hydrophobic" is another way of saying "partially or completely hydrophobic," which is a way in which polymers can be characterized. The Examiner's objection to this language is not understood.

Applicants submit that the claims herein are definite and that the rejection under §112, second paragraph, should be withdrawn.

Claims 84, 86-97, and 100-108 have been rejected under 35 U.S.C. §102(a/e) as being anticipated by Thomson, U.S. Published Patent Application No. 2002/0018884 ("Thomson"). Applicants respectfully traverse this rejection.

A rejection of claims as anticipated under 35 U.S.C. §102(b) requires a showing that each and every claim limitation be identically disclosed in the applied reference. If even one claim limitation is not disclosed in the reference, the claim is patentable over the reference.

Independent Claim 84 comprises prior Claims 2 and 75, and Claim 75 was indicated previously as containing allowable subject matter, especially vis-à-vis previously cited Thomson. Applicants submit that the Examiner was correct before with regard to Claim 75 and that no basis has been shown as to why Claim 84 (which is essentially Claim 75 written in independent form) should now be rejected over Thomson.

Moreover, Thomson does not meet at least one limitation of Claim 84. Claim 84 is directed to a therapeutic implant, that is, a medical device. Such a medical device is not suggested or disclosed Thomson. Also, Thomson does not disclose a hydrophilic coating comprising a biogegradeable polymer.

Withdrawal of the §102(a/e) rejection is respectfully requested.

Claims 85, 98, 99, 109 and 110 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Thomson in view of Pinchuk, U.S. Patent No. 5,229,431

("Pinchuk"). The Examiner maintains that Thomson is silent with regard to including an active agent into the scaffold as well as the particular scaffold material containing polycarbonate polyurethane; that Pinchuk teaches a polycarbonate urethane foam suitable for medical prosthesis and implants; said suitable medical prosthesis and implants; include drug eluting matrices; and that one of ordinary skill in the art would have been motivated to include the particular material polycarbonate urethane because of its crack-resistant, elastomeric and pliable properties and would have additionally expected inclusion of an agent within the matrix to effectively elute into the body.

To establish a *prima facie* case of obviousness, the combination of cited references must teach or suggest all the claim limitations. See In re Vaeck, 947 F.2d 488 (Fed. Cir. 1999). As no such *prima facie* case can be established for the currently pending claims, Applicants respectfully traverse this ground of rejection, as set forth more fully below.

Thomson is inapplicable for at least the reasons given above. In addition, it should be appreciated that the Examiner's combination of Thomson and Pinchuk is wholly inappropriate, since they are directed to entirely different types of polymer technology. Whereas Thomson is directed to foam composites, Pinchuk teaches crack-resistant polycarbonate urethane polymer prostheses. One skilled in the art would not combine any teaching from polycarbonate urethane polymer prostheses of Pinchuk with the foam composites taught by Thomson. The Examiner's "mix and match" approach to combining features from the respective references is contrary to law and contrary to common sense. Moreover, the teachings of Pinchuk do not overcome the deficiencies of Thomson. The rejection over Thomson and Pinchuk under §103(a) should be withdrawn.

Claims 2, 5, 7, 9-12, 61, 63-67, 76 and 79-83 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Thomson in view of Van Antwerp, U.S. Published Patent Application No. 2003/0031699 ("Van Antwerp"). The Examiner maintains that Thomson is silent with regard to microspheres; that Van Antwerp teaches polymer coated

implantable medical devices having a bioactive material posited in or on at least a portion of the coating layer, wherein the coating layer provides for controlled release of the bioactive material from the coating layer (abstract); that it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Thomson and Van Antwerp because both teach hydrophilic coatings comprising an active agent for the purpose of controlled release of said active agent; and that one of ordinary skill in the art would have been motivated to incorporate the microspheres of Van Antwerp into the coating of Thomson because Van Antwerp teaches that the microspheres assist in further modulating or controlling the release of the active agent.

Again, Thomson is inapplicable for at least the reasons above. In addition, whereas Thomson is directed to foam composites, Van Antwerp is directed to non-reticulated polymeric coatings that contain therapeutic substances. The non-reticulated chemistry is wholly different from the chemistry of Thomson and the chemistry claimed herein, and one skilled in the art would not logically combine anything taught by Van Antwerp with Thomsom. To the extent that Thomson is even remotely relevant, there would not be any motivation for an art skilled person to combine these two references. Moreover, even if these references were combined, they do not suggest Applicants' invention.

The rejection based on Thomson and Van Antwerp under §103(a) should be withdrawn.

Claims 3, 68, and 69 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Thomson in view of Van Antwerp and further in view of Pinchuk. The Examiner maintains that Thomson and Van Antwerp are silent with regard to including an agent into the scaffold as well as the particular scaffold material being polycarbonate polyurethane; that Pinchuk teaches a polycarbonate urethane foam suitable for medical prosthesis and implants; that said suitable medical prosthesis and implants include drug

eluting matrices; and that one of ordinary skill in the art would have been motivated to include the particular material polycarbonate urethane because of it crack-resistant, elastomeric and pliable properties.

Claims 3, 68, and 69 are each dependent upon Claim 2. The deficiences of Thomson and Van Antwerp as references herein, particularly with regard to Claim 2, are set forth above, and Pinchuk does not overcome those deficiencies. Therefore, one of ordinary skill in the art would have been motivated to combine these three references to provide a medical implant plant consistent with Claim 2, 68, or 69.

The rejections based on Thomson, Van Antwerp, and Pinchuk under §103(a) should be withdrawn.

Should the claims herein be allowable but for minor matters that could be the subject of a supplemental submission or an Examiner's Amendment, Applicants would appreciate the Examiner's contacting Applicants' undersigned attorney.

Reconsideration and allowance of all the claims herein are respectfully requested.

Respectfully submitted,

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William H. Dippert
Registration No. 26,723

Eckert Seamans Cherin & Mellott, LLC
10 Bank Street
Suite 1061
White Plains, New York 10606
Telephone: 914.949.2909
Facsimile: 914.949.5424
e-Mail: wdippert@eckertseamans.com